

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of A.J. Morgan Homes, Inc.,  
License No. 20242704

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on March 15, 2006 for a prehearing conference at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Order of Prehearing Conference, and Statement of Charges, dated February 7, 2006, and served on the Respondent, A.J. Morgan Homes, Inc., Joshua J. Dieterichs, at the last known address on file with the Department of Labor and Industry.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry, Workplace Services Division ("Department"). The Respondent did not appear in person or by counsel. The record closed upon the Respondent's default on March 15, 2006.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61<sup>11</sup>, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to

the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

### **STATEMENT OF ISSUE**

1. Did Respondent perform negligently or in breach of contract in violation of Minn. Stat. § 326.91, subd. (4)?

2. Did the Respondent fail to respond to the Department's requests for information dated October 4, 2005, October 17, 2005 and November 1, 2005 in violation of Minn. Stat. § 45.027, subd. 1a?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On February 7, 2006, a copy of the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges was served by United States Mail on Joshua J. Dieterichs, A.J. Morgan Homes, Inc., 15786 St. Andrews Lane, Ramsey, MN 55308, as appears from an Affidavit of Mailing on file herein. The mailing was not returned to the Department.

2. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and it did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at prehearing conference may result in a finding that the Respondent is in default, that the Department's

allegations contained in the Statement of Charges may be accepted as true, and that its proposed action may be upheld.

4. Because Respondent failed to appear, it is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2004).

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure to appear at the prehearing conference without the ALJ's prior consent.

6. By performing roofing work negligently or in breach of contract Respondent violated Minn. Stat. § 326.91, subd. 1(4).

7. By failing to respond to the Department's requests for information dated October 4, 2005, October 17, 2005 and November 1, 2005 Respondent violated Minn. Stat. § 45.027, subd. 1a. 1(2).

8. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Labor and Industry take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 23rd day of March 2006.

/s/ Beverly Jones Heydinger

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Default (no tapes)

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<sup>[1]</sup> Unless otherwise noted, the 2004 Minnesota Statutes and the 2005 Minnesota rules apply.